

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CR. REVISION NO. 151 OF 2019

ELIAS SHIKUKU OLWOSH.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Appellant was charged in the Chief Magistrate's Court Kibera in **Cr. Case No. 3048 of 2015** with the offence of being in possession of wildlife trophies contrary to Section 95 of the Wildlife Conservation and management Act 2019. The particulars of the offence were that on the 21st day of July, 2015 at around 2200 hrs at Ngong Town within Kajiado County was in possession of wildlife trophies to wit, 6 pieces of elephant ivory weighing 10 kgs with a street value of Kshs. 1 million without a permit. After conclusion of the trial, he was found guilty and convicted accordingly. He was sentenced to pay a fine of Kshs. 1 million or serve five years imprisonment.

2. The applicant did not prefer an appeal against the conviction and sentence, instead, he filed the instant revision application seeking a review of the sentence. The same is brought by way of Chamber Summons filed on 4th June, 2019 and an affidavit sworn by himself filed on even date but sworn on 23rd May, 2019.

3. He seeks a review of the sentence premised on the grounds that he was remorseful, was a bread winner to a family consisting six children and in any case he is a first offender. He asks the court to impose a noncustodial sentence.

4. Learned state counsel Ms. Akunja did not oppose the application. More so, having regard to the value of the subject matter which according to her was not so high to attract the sentence imposed. She urged the court to apply the principle of sentencing and enunciated by the supreme court in the case of **Francis Kariuko Muruwatetu and Anor vs Republic [2017] 17 eKLR.**

5. The applicant was charged under Section 95 of Wildlife Conservation and Management Act 2013 which provides as follows:

“Any person who keeps or is found in possession of a wildlife trophy or deals in a wildlife trophy, or manufactures any item form a trophy without a permit issued under this Act or exempted in accordance with any other provision of this Act, commits an offence and shall be liable upon conviction to a fine of not less than one million shillings or imprisonment for a term of not less than five years or to both such imprisonment and fine.”

6. Under the Francis Kariuko Muruwatetu case, minimum mandatory sentences have been declared unconstitutional. In that respect, a trial court is enjoined to impose an appropriate sentence premised on the circumstances of the case and the mitigation that an accused person offers. In the present case, the applicant was involved in the destruction of wildlife which is a treasure that Kenya is trying to conserve. In my view therefore, the fine of one million shillings was commensurate with the value of the trophies. What may deem to be harsh is the default sentence imposed. I say so having regard that the applicant was a first offender. A more lenient sentence in that case would be appropriate in the hope that it serves as deterrence.

7. In the upshot, I set aside the default sentence of 5 years and substitute it with a sentence of 3 years. That is to say that the applicant shall pay a fine of 1 million in default serve 3 years imprisonment commencing from the date of conviction less one month being the period he was in remand custody before release on bond. It is so ordered.

Dated and delivered at Nairobi This 30th Day of October, 2019.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of;

1. Applicant in person

2. Ms. Akuja for the Respondent.